

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

KIMBERLY D. LATHROP,

Plaintiff(s)

- against -

OSCAR C. DETUYA, III,

Defendant(s)

ANSWER

Docket No. 07 CIV 3181
(WP4)
(MDF)

Defendant(s) Oscar C. Detuya, III, by the undersigned answering the VERIFIED complaint of the plaintiff(s), upon information and belief, states as follows:

ANSWERING A FIRST CAUSE OF ACTION

FIRST: Denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered and designated as: 1.

SECOND: Admits each and every allegation contained in paragraphs numbered and designated as: 2, 3, 4, 5, 6.

ANSWERING A SECOND CAUSE OF ACTION

THIRD: Answering paragraph 7 repeats and reiterates each and every admission and denial heretofore made to paragraphs set therein with the same force and effect as if more fully set forth herein.

FOURTH: Denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered and designated as: 10.

FIFTH: Denies each and every allegation contained in paragraphs numbered and designated as: 11, 12, 13, 14, 15, 16, 17, 18.

SIXTH: Admits each and every allegation contained in paragraphs numbered and designated as: 8, 9.

AS AND FOR AN AFFIRMATIVE DEFENSE – COMPARATIVE NEGLIGENCE

The personal injuries and/or property damage alleged to have been sustained by the plaintiff(s) were caused entirely or in part through the culpable conduct attributable to the plaintiff(s) and the defendant seeks a dismissal or reduction in any recovery had by the plaintiff in the proportion which the culpable conduct attributable to the plaintiff(s) bears to the culpable conduct which caused the damages.

AS AND FOR AN AFFIRMATIVE DEFENSE – SEAT BELT

The plaintiff(s) damages must be mitigated by the plaintiff(s) failure to use the available seat belts or infant restraining devices and that the damages claimed to have been sustained were caused by the lack of use of said seat belts and/or infant restraining devices.

AS AND FOR AN AFFIRMATIVE DEFENSE – COLLATERAL SOURCE

The costs incurred, or paid by plaintiff(s), if any, for medical care, dental care, custodial care or rehabilitation services, loss of earning or other economic loss, in the past or future, were or will, with reasonable certainty be replaced or indemnified, in whole or in part, from a collateral source of the type described in CPLR §4545 and defendant is entitled to have any award reduced in the amount of such payments.

AS AND FOR AN AFFIRMATIVE DEFENSE – N.J. COMPARATIVE

The personal injuries alleged to have been sustained by the plaintiff were caused entirely or in part through the culpable conduct attributable to the plaintiff and the defendant seeks a dismissal of plaintiff's cause of action if the comparative negligence is greater than the combined negligence of the defendants or a reduction in any recovery had by the plaintiff in the proportion which the comparative negligence attributable to the plaintiff bears to the negligence which caused the damages: N.J.S.A. 2A: 15-5.1.

AS AND FOR AN AFFIRMATIVE DEFENSE – N.J. NO FAULT

Plaintiff has failed to sustain a serious injury, as defined by and required by N.J.S.A.39: 6A-8(a).

AS AND FOR AN AFFIRMATIVE DEFENSE – CT COMPARATIVE

The personal injuries alleged to have been sustained by the plaintiff were caused entirely , or in part through the negligence attributable to the plaintiff and the defendant seeks a dismissal of the plaintiff's cause of action if the cooperative negligence is greater than the combined negligence of the defendants or a reduction in any recovery had by the plaintiff in the proportion which the comparative negligence attributable to the plaintiff bears to the negligence which caused the damages C.G.S.A. Section 52-572h.

WHEREFORE, defendant(s) demand(s) judgment dismissing the plaintiff(s) complaint herein together with the costs and disbursements of this action.

DATED: Westbury, New York
June 13, 2007

Yours, etc.

John W. Kondulis, Esq. (JK4978)
JAMES G. BILELLO & ASSOCIATES (JB7226)
Attorneys for Defendant(s)
Oscar C. Detuya, III

875 Merrick Avenue
Westbury, New York 11590
(516) 229-4312
Our File No. 07K0687
Claim No:0292384610101011 (J095)

TO:

Marvin A. Cooper, P.C.
Attorneys for Plaintiff(s)
Kimberly D. Lathrop
175 Main Street
Suite 706
White Plains, NY 10601
914 428 9200

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JAMES G. BILELLO & ASSOCIATES

Attorneys for the Defendant(s)

Oscar C. Detuya, III

Office and Post Office Address

875 Merrick Avenue

Westbury, New York 11590

(516) 229-4312

To:

Marvin A. Cooper, P.C.
Attorneys for Plaintiff(s)
Kimberly D. Lathrop
175 Main Street
Suite 706
White Plains, NY 10601
914 428 9200

Due and timely service of a copy of the within _____ is hereby admitted.

Dated June 13, 2007

Attorney(s) for Oscar C. Detuya, III

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK) SS.:
COUNTY OF NASSAU)

Meryl Bader, being duly sworn, deposes and says that she is over the age of 18 years, that on the _____ day of June, 2007 she served the annexed VERIFIED ANSWER upon the following named attorneys and parties:

TO:

Marvin A. Cooper, P.C.
Attorneys for Plaintiff(s)
Kimberly D. Lathrop
175 Main Street
Suite 706
White Plains, NY 10601
914 428 9200

by depositing true copies thereof in a post box maintained by the United States Postal authorities, enclosed in securely closed post-paid wrappers addressed to the above-named attorney(s) and party(s) listed above; that being the addresses designated by them as ascertained by deponent from the file maintained in the office of the attorneys for the Defendant(s) herein.

Meryl Bader

Sworn to before me this
_____ day of June, 2007

Notary Public